

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 1/25/2023
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HILARY A. BEST,

Plaintiff,

-v -

JAMES MERCHANT, *New York City Correction  
Officer, Shield #8237, et al.*,

Defendants.

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1:21-cv-779-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Plaintiff has filed a third amended complaint in this case on the docket. Dkt. No. 89.<sup>1</sup> That amended complaint, however, does not comply with the Court’s prior order concerning the scope of Plaintiff’s leave to amend. In that order, which dismissed Plaintiff’s second amended complaint in part, Plaintiff was granted leave “to replead (a) his malicious prosecution claim against Defendant Fontanez and (b) his municipal liability claim against the City of New York.” Dkt. No. 84 at 17. And Plaintiff was specifically “advised that any amended complaint must comply with the Court’s guidance” concerning the scope of leave to amend. *Id.* at 18.

Plaintiff’s third amended complaint, however, attempts to add two new defendants—Matthew Klimasaskas and Jose L. Velez. It is, accordingly, plainly not within the scope of the Court’s order concerning repleading. As it does not comply with the Court’s prior order, it will be denied, and the Court will proceed with Plaintiff’s second amended complaint as the active complaint in this case. *See* Dkt. No. 58. The Court will enter a separate order scheduling an initial pretrial conference in this case for Plaintiff’s surviving claim—malicious prosecution as pleaded

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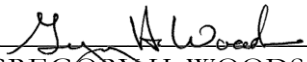
<sup>1</sup> The complaint is timely: Plaintiff was given until January 20, 2023 to file an additional amended complaint in this case, *see* Dkt. No. 88, and while the docket entry for Plaintiff’s amended complaint reads January 23, 2023, it was received by the Court’s *pro se* office on January 20, 2023. *See* Dkt. No. 89.

against Defendant James Merchant, *see* Dkt. No. 84 at 11–14—and to discuss the ongoing process of identifying and serving the John Doe defendants described in Plaintiff’s second amended complaint, *see* Dkt. No. 85.<sup>2</sup>

The Clerk of Court is directed to remove Benjamin Fontanez, Jose L. Velez, and Matthew Klimasauskas from the caption of this case, and to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: January 25, 2023  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge

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<sup>2</sup> It is evident from the face of Plaintiff’s third amended complaint that the added defendants are not the defendants previously described as John Doe defendants in Plaintiff’s second amended complaint.